

106TH CONGRESS
1ST SESSION

H. R. 1161

To revise the banking and bankruptcy insolvency laws with respect to the termination and netting of financial contracts, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 17, 1999

Mr. LEACH (for himself, Mr. LAFALCE, and Mrs. ROUKEMA) introduced the following bill; which was referred to the Committee on Banking and Financial Services, and in addition to the Committees on the Judiciary, and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To revise the banking and bankruptcy insolvency laws with respect to the termination and netting of financial contracts, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Financial Contract
5 Netting Improvement Act of 1999”.

1 **SEC. 2. TREATMENT OF CERTAIN AGREEMENTS BY CON-**
2 **SERVATORS OR RECEIVERS OF INSURED DE-**
3 **POSITORY INSTITUTIONS.**

4 (a) **DEFINITION OF QUALIFIED FINANCIAL CON-**
5 **TRACT.**—Section 11(e)(8)(D)(i) of the Federal Deposit In-
6 surance Act (12 U.S.C. 1821(e)(8)(D)(i)) is amended by
7 inserting “, resolution or order” after “any similar agree-
8 ment that the Corporation determines by regulation”.

9 (b) **DEFINITION OF SECURITIES CONTRACT.**—Sec-
10 tion 11(e)(8)(D)(ii) of the Federal Deposit Insurance Act
11 (12 U.S.C. 1821(e)(8)(D)(ii)) is amended to read as fol-
12 lows:

13 “(ii) **SECURITIES CONTRACT.**—The
14 term ‘securities contract’—

15 “(I) means a contract for the
16 purchase, sale, or loan of a security, a
17 certificate of deposit, a mortgage loan,
18 or any interest in a mortgage loan, a
19 group or index of securities, certifi-
20 cates of deposit, or mortgage loans or
21 interests therein (including any inter-
22 est therein or based on the value
23 thereof) or any option on any of the
24 foregoing, including any option to
25 purchase or sell any such security,

1 certificate of deposit, loan, interest,
2 group or index, or option;

3 “(II) does not include any pur-
4 chase, sale, or repurchase obligation
5 under a participation in a commercial
6 mortgage loan unless the Corporation
7 determines by regulation, resolution,
8 or order to include any such agree-
9 ment within the meaning of such
10 term;

11 “(III) means any option entered
12 into on a national securities exchange
13 relating to foreign currencies;

14 “(IV) means the guarantee by or
15 to any securities clearing agency of
16 any settlement of cash, securities, cer-
17 tificates of deposit, mortgage loans or
18 interests therein, group or index of se-
19 curities, certificates of deposit, or
20 mortgage loans or interests therein
21 (including any interest therein or
22 based on the value thereof) or option
23 on any of the foregoing, including any
24 option to purchase or sell any such se-

1 curity, certificate of deposit, loan, in-
2 terest, group or index or option;

3 “(V) means any margin loan;

4 “(VI) means any other agree-
5 ment or transaction that is similar to
6 any agreement or transaction referred
7 to in this clause;

8 “(VII) means any combination of
9 the agreements or transactions re-
10 ferred to in this clause;

11 “(VIII) means any option to
12 enter into any agreement or trans-
13 action referred to in this clause;

14 “(IX) means a master agreement
15 that provides for an agreement or
16 transaction referred to in subclause
17 (I), (III), (IV), (V), (VI), (VII), or
18 (VIII), together with all supplements
19 to any such master agreement, with-
20 out regard to whether the master
21 agreement provides for an agreement
22 or transaction that is not a securities
23 contract under this clause, except that
24 the master agreement shall be consid-
25 ered to be a securities contract under

1 this clause only with respect to each
2 agreement or transaction under the
3 master agreement that is referred to
4 in subclause (I), (III), (IV), (V), (VI),
5 (VII), or (VIII); and

6 “(X) means any security agree-
7 ment or arrangement or other credit
8 enhancement related to any agree-
9 ment or transaction referred to in this
10 clause.”.

11 (c) DEFINITION OF COMMODITY CONTRACT.—Sec-
12 tion 11(e)(8)(D)(iii) of the Federal Deposit Insurance Act
13 (12 U.S.C. 1821(e)(8)(D)(iii)) is amended to read as fol-
14 lows:

15 “(iii) COMMODITY CONTRACT.—The
16 term ‘commodity contract’ means—

17 “(I) with respect to a futures
18 commission merchant, a contract for
19 the purchase or sale of a commodity
20 for future delivery on, or subject to
21 the rules of, a contract market or
22 board of trade;

23 “(II) with respect to a foreign fu-
24 tures commission merchant, a foreign
25 future;

1 “(III) with respect to a leverage
2 transaction merchant, a leverage
3 transaction;

4 “(IV) with respect to a clearing
5 organization, a contract for the pur-
6 chase or sale of a commodity for fu-
7 ture delivery on, or subject to the
8 rules of, a contract market or board
9 of trade that is cleared by such clear-
10 ing organization, or commodity option
11 traded on, or subject to the rules of,
12 a contract market or board of trade
13 that is cleared by such clearing orga-
14 nization;

15 “(V) with respect to a commodity
16 options dealer, a commodity option;

17 “(VI) any other agreement or
18 transaction that is similar to any
19 agreement or transaction referred to
20 in this clause;

21 “(VII) any combination of the
22 agreements or transactions referred to
23 in this clause;

1 “(VIII) any option to enter into
2 any agreement or transaction referred
3 to in this clause;

4 “(IX) a master agreement that
5 provides for an agreement or trans-
6 action referred to in subclause (I),
7 (II), (III), (IV), (V), (VI), (VII), or
8 (VIII), together with all supplements
9 to any such master agreement, with-
10 out regard to whether the master
11 agreement provides for an agreement
12 or transaction that is not a com-
13 modity contract under this clause, ex-
14 cept that the master agreement shall
15 be considered to be a commodity con-
16 tract under this clause only with re-
17 spect to each agreement or trans-
18 action under the master agreement
19 that is referred to in subclause (I),
20 (II), (III), (IV), (V), (VI), (VII), or
21 (VIII); or

22 “(X) a security agreement or ar-
23 rangement or other credit enhance-
24 ment related to any agreement or

1 transaction referred to in this
2 clause.”.

3 (d) DEFINITION OF FORWARD CONTRACT.—Section
4 11(e)(8)(D)(iv) of the Federal Deposit Insurance Act (12
5 U.S.C. 1821(e)(8)(D)(iv)) is amended to read as follows:

6 “(iv) FORWARD CONTRACT.—The
7 term ‘forward contract’ means—

8 “(I) a contract (other than a
9 commodity contract) for the purchase,
10 sale, or transfer of a commodity or
11 any similar good, article, service,
12 right, or interest which is presently or
13 in the future becomes the subject of
14 dealing in the forward contract trade,
15 or product or byproduct thereof, with
16 a maturity date more than 2 days
17 after the date the contract is entered
18 into, including a repurchase agree-
19 ment, reverse repurchase agreement,
20 consignment, lease, swap, hedge
21 transaction, deposit, loan, option, allo-
22 cated transaction, unallocated trans-
23 action, or any other similar agree-
24 ment;

1 “(II) any combination of agree-
2 ments or transactions referred to in
3 subclauses (I) and (III);

4 “(III) any option to enter into
5 any agreement or transaction referred
6 to in subclause (I) or (II);

7 “(IV) a master agreement that
8 provides for an agreement or trans-
9 action referred to in subclauses (I),
10 (II), or (III), together with all supple-
11 ments to any such master agreement,
12 without regard to whether the master
13 agreement provides for an agreement
14 or transaction that is not a forward
15 contract under this clause, except that
16 the master agreement shall be consid-
17 ered to be a forward contract under
18 this clause only with respect to each
19 agreement or transaction under the
20 master agreement that is referred to
21 in subclause (I), (II), or (III); or

22 “(V) a security agreement or ar-
23 rangement or other credit enhance-
24 ment related to any agreement or

1 transaction referred to in subclause
2 (I), (II), (III), or (IV).”.

3 (e) DEFINITION OF REPURCHASE AGREEMENT.—
4 Section 11(e)(8)(D)(v) of the Federal Deposit Insurance
5 Act (12 U.S.C. 1821(e)(8)(D)(v)) is amended to read as
6 follows:

7 “(v) REPURCHASE AGREEMENT.—The
8 terms ‘repurchase agreement’ and ‘reverse
9 repurchase agreement’—

10 “(I) mean an agreement, includ-
11 ing related terms, which provides for
12 the transfer of 1 or more certificates
13 of deposit, mortgage-related securities
14 (as such term is defined in the Securi-
15 ties Exchange Act of 1934), mortgage
16 loans, interests in mortgage-related
17 securities or mortgage loans, eligible
18 bankers’ acceptances, qualified foreign
19 government securities or securities
20 that are direct obligations of, or that
21 are fully guaranteed by, the United
22 States or any agency of the United
23 States against the transfer of funds
24 by the transferee of such certificates
25 of deposit, eligible bankers’ accept-

1 ances, securities, loans, or interests
2 with a simultaneous agreement by
3 such transferee to transfer to the
4 transferor thereof certificates of de-
5 posit, eligible bankers' acceptances,
6 securities, loans, or interests as de-
7 scribed above, at a date certain not
8 later than 1 year after such transfers
9 or on demand, against the transfer of
10 funds, or any other similar agreement;

11 “(II) does not include any repur-
12 chase obligation under a participation
13 in a commercial mortgage loan unless
14 the Corporation determines by regula-
15 tion, resolution, or order to include
16 any such participation within the
17 meaning of such term;

18 “(III) means any combination of
19 agreements or transactions referred to
20 in subclauses (I) and (IV);

21 “(IV) means any option to enter
22 into any agreement or transaction re-
23 ferred to in subclause (I) or (III);

24 “(V) means a master agreement
25 that provides for an agreement or

1 transaction referred to in subclause
2 (I), (III), or (IV), together with all
3 supplements to any such master
4 agreement, without regard to whether
5 the master agreement provides for an
6 agreement or transaction that is not a
7 repurchase agreement under this
8 clause, except that the master agree-
9 ment shall be considered to be a re-
10 purchase agreement under this sub-
11 clause only with respect to each agree-
12 ment or transaction under the master
13 agreement that is referred to in sub-
14 clause (I), (III), or (IV); and

15 “(VI) means a security agree-
16 ment or arrangement or other credit
17 enhancement related to any agree-
18 ment or transaction referred to in
19 subclause (I), (III), (IV), or (V).

20 For purposes of this clause, the term
21 ‘qualified foreign government security’
22 means a security that is a direct obligation
23 of, or that is fully guaranteed by, the cen-
24 tral government of a member of the Orga-
25 nization for Economic Cooperation and

1 Development (as determined by regulation
2 or order adopted by the appropriate Fed-
3 eral banking authority).”.

4 (f) DEFINITION OF SWAP AGREEMENT.—The Fed-
5 eral Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(vi))
6 is amended to read as follows:

7 “(vi) SWAP AGREEMENT.—The term
8 ‘swap agreement’ means—

9 “(I) any agreement, including the
10 terms and conditions incorporated by
11 reference in any such agreement,
12 which is an interest rate swap, option,
13 future, or forward agreement, includ-
14 ing a rate floor, rate cap, rate collar,
15 cross-currency rate swap, and basis
16 swap; a spot, same day-tomorrow, to-
17 morrow-next, forward, or other for-
18 eign exchange or precious metals
19 agreement; a currency swap, option,
20 future, or forward agreement; an eq-
21 uity index or equity swap, option, fu-
22 ture, or forward agreement; a debt
23 index or debt swap, option, future, or
24 forward agreement; a credit spread or
25 credit swap, option, future, or forward

1 agreement; a commodity index or
2 commodity swap, option, future, or
3 forward agreement;

4 “(II) any agreement or trans-
5 action similar to any other agreement
6 or transaction referred to in this
7 clause that is presently, or in the fu-
8 ture becomes, regularly entered into
9 in the swap market (including terms
10 and conditions incorporated by ref-
11 erence in such agreement) and that is
12 a forward, swap, future, or option on
13 1 or more rates, currencies, commod-
14 ities, equity securities or other equity
15 instruments, debt securities or other
16 debt instruments, or economic indices
17 or measures of economic risk or value;

18 “(III) any combination of agree-
19 ments or transactions referred to in
20 this clause;

21 “(IV) any option to enter into
22 any agreement or transaction referred
23 to in this clause;

24 “(V) a master agreement that
25 provides for an agreement or trans-

1 action referred to in subclause (I),
2 (II), (III), or (IV), together with all
3 supplements to any such master
4 agreement, without regard to whether
5 the master agreement contains an
6 agreement or transaction that is not a
7 swap agreement under this clause, ex-
8 cept that the master agreement shall
9 be considered to be a swap agreement
10 under this clause only with respect to
11 each agreement or transaction under
12 the master agreement that is referred
13 to in subclause (I), (II), (III), or (IV);
14 and

15 “(VI) any security agreement or
16 arrangement or other credit enhance-
17 ment related to any agreements or
18 transactions referred to in subpara-
19 graph (I), (II), (III), or (IV).

20 Such term is applicable for purposes of
21 this Act only and shall not be construed or
22 applied so as to challenge or affect the
23 characterization, definition, or treatment of
24 any swap agreement under any other stat-
25 ute, regulation, or rule, including the Secu-

1 urities Act of 1933, the Securities Exchange
2 Act of 1934, the Public Utility Holding
3 Company Act of 1935, the Trust Indenture
4 Act of 1939, the Investment Company Act
5 of 1940, the Investment Advisers Act of
6 1940, the Securities Investor Protection
7 Act of 1970, the Commodity Exchange
8 Act, and the regulations promulgated by
9 the Securities and Exchange Commission
10 or the Commodity Futures Trading Com-
11 mission.”.

12 (g) DEFINITION OF TRANSFER.—Section
13 11(e)(8)(D)(viii) of the Federal Deposit Insurance Act (12
14 U.S.C. 1821(e)(8)(D)(viii)) is amended to read as follows:

15 “(viii) TRANSFER.—The term ‘trans-
16 fer’ means every mode, direct or indirect,
17 absolute or conditional, voluntary or invol-
18 untary, of disposing of or parting with
19 property or with an interest in property,
20 including retention of title as a security in-
21 terest and foreclosure of the depository in-
22 stitution’s equity of redemption.”.

23 (h) TREATMENT OF QUALIFIED FINANCIAL CON-
24 TRACTS.—Section 11(e)(8) of the Federal Deposit Insur-
25 ance Act (12 U.S.C. 1821(e)(8)) is amended—

1 (1) in subparagraph (A), by striking “para-
2 graph (10)” and inserting “paragraphs (9) and
3 (10)”;

4 (2) in subparagraph (A)(i), by striking “to
5 cause the termination or liquidation” and inserting
6 “such person has to cause the termination, liquida-
7 tion, or acceleration”;

8 (3) by amending subparagraph (A)(ii) to read
9 as follows:

10 “(ii) any right under any security
11 agreement or arrangement or other credit
12 enhancement related to 1 or more qualified
13 financial contracts described in clause
14 (i);” and

15 (4) by amending subparagraph (E)(ii) to read
16 as follows:

17 “(ii) any right under any security
18 agreement or arrangement or other credit
19 enhancement related to 1 or more qualified
20 financial contracts described in clause
21 (i);”.

22 (i) AVOIDANCE OF TRANSFERS.—Section
23 11(e)(8)(C)(i) of the Federal Deposit Insurance Act (12
24 U.S.C. 1821(e)(8)(C)(i)) is amended by inserting “section
25 5242 of the Revised Statutes (12 U.S.C. 91) or any other

1 Federal or State law relating to the avoidance of pref-
2 erential or fraudulent transfers,” before “the Corpora-
3 tion”.

4 **SEC. 3. AUTHORITY OF THE CORPORATION WITH RESPECT**
5 **TO FAILED AND FAILING INSTITUTIONS.**

6 (a) IN GENERAL.—Section 11(e)(8) of the Federal
7 Deposit Insurance Act (12 U.S.C. 1821(e)(8)) is
8 amended—

9 (1) in subparagraph (E), by striking “other
10 than paragraph (12) of this subsection, subsection
11 (d)(9)” and inserting “other than subsections (d)(9)
12 and (e)(10)”; and

13 (2) by adding at the end the following new sub-
14 paragraphs:

15 “(F) CLARIFICATION.—No provision of law
16 shall be construed as limiting the right or
17 power of the Corporation, or authorizing any
18 court or agency to limit or delay, in any man-
19 ner, the right or power of the Corporation to
20 transfer any qualified financial contract in ac-
21 cordance with paragraphs (9) and (10) of this
22 subsection or to disaffirm or repudiate any such
23 contract in accordance with subsection (e)(1) of
24 this section.

1 “(G) WALKAWAY CLAUSES NOT EFFEC-
2 TIVE.—

3 “(i) IN GENERAL.—Notwithstanding
4 the provisions of subparagraphs (A) and
5 (E), and sections 403 and 404 of the Fed-
6 eral Deposit Insurance Corporation Im-
7 provement Act of 1991, no walkaway
8 clause shall be enforceable in a qualified fi-
9 nancial contract of an insured depository
10 institution in default.

11 “(ii) WALKAWAY CLAUSE DEFINED.—
12 For purposes of this subparagraph, the
13 term ‘walkaway clause’ means a provision
14 in a qualified financial contract that, after
15 calculation of a value of a party’s position
16 or an amount due to or from 1 of the par-
17 ties in accordance with its terms upon ter-
18 mination, liquidation, or acceleration of the
19 qualified financial contract, either does not
20 create a payment obligation of a party or
21 extinguishes a payment obligation of a
22 party in whole or in part solely because of
23 such party’s status as a nondefaulting
24 party.”.

1 (b) TECHNICAL AND CONFORMING AMENDMENT.—
2 Section 11(e)(12)(A) of the Federal Deposit Insurance
3 Act (12 U.S.C. 1821(e)(12)(A)) is amended by inserting
4 “or the exercise of rights or powers” after “the appoint-
5 ment”.

6 **SEC. 4. AMENDMENTS RELATING TO TRANSFERS OF QUALI-**
7 **FIED FINANCIAL CONTRACTS.**

8 (a) TRANSFERS OF QUALIFIED FINANCIAL CON-
9 TRACTS TO FINANCIAL INSTITUTIONS.—Section 11(e)(9)
10 of the Federal Deposit Insurance Act (12 U.S.C.
11 1821(e)(9)) is amended to read as follows:

12 “(9) TRANSFER OF QUALIFIED FINANCIAL CON-
13 TRACTS.—

14 “(A) IN GENERAL.—In making any trans-
15 fer of assets or liabilities of a depository institu-
16 tion in default which includes any qualified fi-
17 nancial contract, the conservator or receiver for
18 such depository institution shall either—

19 “(i) transfer to 1 financial institution,
20 other than a financial institution for which
21 a conservator, receiver, trustee in bank-
22 ruptcy, or other legal custodian has been
23 appointed or which is otherwise the subject
24 of a bankruptcy or insolvency proceeding—

1 “(I) all qualified financial con-
2 tracts between any person or any af-
3 filiate of such person and the deposi-
4 tory institution in default;

5 “(II) all claims of such person or
6 any affiliate of such person against
7 such depository institution under any
8 such contract (other than any claim
9 which, under the terms of any such
10 contract, is subordinated to the claims
11 of general unsecured creditors of such
12 institution);

13 “(III) all claims of such deposi-
14 tory institution against such person or
15 any affiliate of such person under any
16 such contract; and

17 “(IV) all property securing or
18 any other credit enhancement for any
19 contract described in subclause (I) or
20 any claim described in subclause (II)
21 or (III) under any such contract; or

22 “(ii) transfer none of the qualified fi-
23 nancial contracts, claims, property or other
24 credit enhancement referred to in clause (i)

1 (with respect to such person and any affil-
2 iate of such person).

3 “(B) TRANSFER TO FOREIGN BANK, FOR-
4 EIGN FINANCIAL INSTITUTION, OR BRANCH OR
5 AGENCY OF A FOREIGN BANK OR FINANCIAL IN-
6 STITUTION.—In transferring any qualified fi-
7 nancial contracts and related claims and prop-
8 erty pursuant to subparagraph (A)(i), the con-
9 servator or receiver for such depository institu-
10 tion shall not make such transfer to a foreign
11 bank, financial institution organized under the
12 laws of a foreign country, or a branch or agency
13 of a foreign bank or financial institution unless,
14 under the law applicable to such bank, financial
15 institution, branch or agency, to the qualified
16 financial contracts, and to any netting contract,
17 any security agreement or arrangement or other
18 credit enhancement related to 1 or more quali-
19 fied financial contracts the contractual rights of
20 the parties to such qualified financial contracts,
21 netting contracts, security agreements or ar-
22 rangements, or other credit enhancements are
23 enforceable substantially to the same extent as
24 permitted under this section.

1 “(C) TRANSFER OF CONTRACTS SUBJECT
2 TO THE RULES OF A CLEARING ORGANIZA-
3 TION.—In the event that a conservator or re-
4 ceiver transfers any qualified financial contract
5 and related claims, property and credit en-
6 hancements pursuant to subparagraph (A)(i)
7 and such contract is subject to the rules of a
8 clearing organization, the clearing organization
9 shall not be required to accept the transferee as
10 a member by virtue of the transfer.

11 “(D) DEFINITION.—For purposes of this
12 section, the term ‘financial institution’ means a
13 broker or dealer, a depository institution, a fu-
14 tures commission merchant, or any other insti-
15 tution as determined by the Corporation by reg-
16 ulation to be a financial institution.”.

17 (b) NOTICE TO QUALIFIED FINANCIAL CONTRACT
18 COUNTERPARTIES.—Section 11(e)(10)(A) of the Federal
19 Deposit Insurance Act (12 U.S.C. 1821(e)(10)(A)) is
20 amended by amending the flush material following clause
21 (ii) to read as follows: “the conservator or receiver shall
22 notify any person who is a party to any such contract of
23 such transfer by 5:00 p.m. (eastern time) on the business
24 day following the date of the appointment of the receiver,

1 in the case of a receivership, or the business day following
2 such transfer, in the case of a conservatorship.”.

3 (c) RIGHTS AGAINST RECEIVER AND TREATMENT OF
4 BRIDGE BANKS.—Section 11(e)(10) of the Federal De-
5 posit Insurance Act (12 U.S.C. 1821(e)(10)) is further
6 amended—

7 (1) by redesignating subparagraph (B) as sub-
8 paragraph (D); and

9 (2) by inserting after subparagraph (A) the fol-
10 lowing new subparagraphs:

11 “(B) CERTAIN RIGHTS NOT ENFORCE-
12 ABLE.—

13 “(i) RECEIVERSHIP.—A person who is
14 a party to a qualified financial contract
15 with an insured depository institution may
16 not exercise any right such person has to
17 terminate, liquidate, or net such contract
18 under paragraph (8)(A) or section 403 or
19 404 of the Federal Deposit Insurance Cor-
20 poration Improvement Act of 1991 solely
21 by reason of or incidental to the appoint-
22 ment of a receiver for the depository insti-
23 tution (or the insolvency or financial condi-
24 tion of the depository institution for which
25 the receiver has been appointed)—

1 “(I) until 5:00 p.m. (eastern
2 time) on the business day following
3 the date of the appointment of the re-
4 ceiver; or

5 “(II) after the person has re-
6 ceived notice that the contract has
7 been transferred pursuant to para-
8 graph (9)(A).

9 “(ii) CONSERVATORSHIP.—A person
10 who is a party to a qualified financial con-
11 tract with an insured depository institution
12 may not exercise any right such person has
13 to terminate, liquidate, or net such con-
14 tract under paragraph (8)(E) or sections
15 403 or 404 of the Federal Deposit Insur-
16 ance Corporation Improvement Act of
17 1991, solely by reason of or incidental to
18 the appointment of a conservator for the
19 depository institution (or the insolvency or
20 financial condition of the depository insti-
21 tution for which the conservator has been
22 appointed).

23 “(iii) NOTICE.—For purposes of this
24 subsection, the Corporation as receiver or
25 conservator of an insured depository insti-

1 tution shall be deemed to have notified a
2 person who is a party to a qualified finan-
3 cial contract with such depository institu-
4 tion if the Corporation has taken steps
5 reasonably calculated to provide notice to
6 such person by the time specified in sub-
7 paragraph (A) of this subsection.

8 “(C) TREATMENT OF BRIDGE BANKS.—

9 The following institutions shall not be consid-
10 ered a financial institution for which a conser-
11 vator, receiver, trustee in bankruptcy, or other
12 legal custodian has been appointed or which is
13 otherwise the subject of a bankruptcy or insol-
14 vency proceeding for purposes of subsection
15 (e)(9)—

16 “(i) a bridge bank; or

17 “(ii) a depository institution organized
18 by the Corporation, for which a conser-
19 vator is appointed either—

20 “(I) immediately upon the orga-
21 nization of the institution; or

22 “(II) at the time of a purchase
23 and assumption transaction between
24 such institution and the Corporation

1 as receiver for a depository institution
2 in default.”.

3 **SEC. 5. AMENDMENTS RELATING TO DISAFFIRMANCE OR**
4 **REPUDIATION OF QUALIFIED FINANCIAL**
5 **CONTRACTS.**

6 Section 11(e) of the Federal Deposit Insurance Act
7 (12 U.S.C. 1821(e)) is further amended—

8 (1) by redesignating paragraphs (11) through
9 (15) as paragraphs (12) through (16), respectively;
10 and

11 (2) by inserting after paragraph (10) the fol-
12 lowing new paragraph:

13 “(11) DISAFFIRMANCE OR REPUDIATION OF
14 QUALIFIED FINANCIAL CONTRACTS.—In exercising
15 the rights of disaffirmance or repudiation of a con-
16 servator or receiver with respect to any qualified fi-
17 nancial contract to which an insured depository in-
18 stitution is a party, the conservator or receiver for
19 such institution shall either—

20 “(A) disaffirm or repudiate all qualified fi-
21 nancial contracts between—

22 “(i) any person or any affiliate of
23 such person; and

24 “(ii) the depository institution in de-
25 fault; or

1 “(B) disaffirm or repudiate none of the
2 qualified financial contracts referred to in sub-
3 paragraph (A) (with respect to such person or
4 any affiliate of such person).”.

5 **SEC. 6. CLARIFYING AMENDMENT RELATING TO MASTER**
6 **AGREEMENTS.**

7 Section 11(e)(8)(D)(vii) of the Federal Deposit In-
8 surance Act (12 U.S.C. 1821(e)(8)(D)(vii)) is amended to
9 read as follows:

10 “(vii) TREATMENT OF MASTER
11 AGREEMENT AS 1 AGREEMENT.—Any mas-
12 ter agreement for any contract or agree-
13 ment described in any preceding clause of
14 this subparagraph (or any master agree-
15 ment for such master agreement or agree-
16 ments), together with all supplements to
17 such master agreement, shall be treated as
18 a single agreement and a single qualified
19 financial contract. If a master agreement
20 contains provisions relating to agreements
21 or transactions that are not themselves
22 qualified financial contracts, the master
23 agreement shall be deemed to be a quali-
24 fied financial contract only with respect to

1 those transactions that are themselves
2 qualified financial contracts.”.

3 **SEC. 7. FEDERAL DEPOSIT INSURANCE CORPORATION IM-**
4 **PROVEMENT ACT OF 1991.**

5 (a) DEFINITIONS.—Section 402 of the Federal De-
6 posit Insurance Corporation Improvement Act of 1991 (12
7 U.S.C. 4402) is amended—

8 (1) in paragraph (6)—

9 (A) by redesignating subparagraphs (B)
10 through (D) as subparagraphs (C) through (E),
11 respectively;

12 (B) by inserting after subparagraph (A)
13 the following new subparagraph:

14 “(B) an uninsured national bank or an un-
15 insured State bank that is a member of the
16 Federal Reserve System if the national bank or
17 State member bank is not eligible to make ap-
18 plication to become an insured bank under sec-
19 tion 5 of the Federal Deposit Insurance Act;”;
20 and

21 (C) by amending subparagraph (C) (as re-
22 designated) to read as follows:

23 “(C) a branch or agency of a foreign bank,
24 a foreign bank and any branch or agency of the
25 foreign bank, or the foreign bank that estab-

1 lished the branch or agency, as those terms are
2 defined in section 1(b) of the International
3 Banking Act of 1978;”;

4 (2) in paragraph (11), by adding before the pe-
5 riod “and any other clearing organization with which
6 such clearing organization has a netting contract”;

7 (3) by amending paragraph (14)(A)(i) to read
8 as follows:

9 “(i) means a contract or agreement
10 between 2 or more financial institutions,
11 clearing organizations, or members that
12 provides for netting present or future pay-
13 ment obligations or payment entitlements
14 (including liquidation or closeout values re-
15 lating to such obligations or entitlements)
16 among the parties to the agreement; and”;
17 and

18 (4) by adding at the end the following new
19 paragraph:

20 “(15) PAYMENT.—The term ‘payment’ means a
21 payment of United States dollars, another currency,
22 or a composite currency, and a noncash delivery, in-
23 cluding a payment or delivery to liquidate an
24 unmatured obligation.”.

1 (b) ENFORCEABILITY OF BILATERAL NETTING CON-
2 TRACTS.—Section 403 of the Federal Deposit Insurance
3 Corporation Improvement Act of 1991 (12 U.S.C. 4403)
4 is amended—

5 (1) by amending subsection (a) to read as fol-
6 lows:

7 “(a) GENERAL RULE.—Notwithstanding any other
8 provision of State or Federal law (other than paragraphs
9 (8)(E), (8)(F), and (10)(B) of section 11(e) of the Federal
10 Deposit Insurance Act or any order authorized under sec-
11 tion 5(b)(2) of the Securities Investor Protection Act of
12 1970, the covered contractual payment obligations and the
13 covered contractual payment entitlements between any 2
14 financial institutions shall be netted in accordance with,
15 and subject to the conditions of, the terms of any applica-
16 ble netting contract (except as provided in section
17 561(b)(2) of title 11).”; and

18 (2) by adding at the end the following new sub-
19 section:

20 “(f) ENFORCEABILITY OF SECURITY AGREE-
21 MENTS.—The provisions of any security agreement or ar-
22 rangement or other credit enhancement related to 1 or
23 more netting contracts between any 2 financial institu-
24 tions shall be enforceable in accordance with their terms
25 (except as provided in section 561(b)(2) of title 11) and

1 shall not be stayed, avoided, or otherwise limited by any
2 State or Federal law (other than paragraphs (8)(E),
3 (8)(F), and (10)(B) of section 11(e) of the Federal De-
4 posit Insurance Act and section 5(b)(2) of the Securities
5 Investor Protection Act of 1970).”.

6 (c) ENFORCEABILITY OF CLEARING ORGANIZATION
7 NETTING CONTRACTS.—Section 404 of the Federal De-
8 posit Insurance Corporation Improvement Act of 1991 (12
9 U.S.C. 4404) is amended—

10 (1) by amending subsection (a) to read as fol-
11 lows:

12 “(a) GENERAL RULE.—Notwithstanding any other
13 provision of State or Federal law (other than paragraphs
14 (8)(E), (8)(F), and (10)(B) of section 11(e) of the Federal
15 Deposit Insurance Act and any order authorized under
16 section 5(b)(2) of the Securities Investor Protection Act
17 of 1970, the covered contractual payment obligations and
18 the covered contractual payment entitlements of a member
19 of a clearing organization to and from all other members
20 of a clearing organization shall be netted in accordance
21 with and subject to the conditions of any applicable net-
22 ting contract (except as provided in section 561(b)(2) of
23 title 11, United States Code).”; and

24 (2) by adding at the end the following new sub-
25 section:

1 “(h) ENFORCEABILITY OF SECURITY AGREE-
2 MENTS.—The provisions of any security agreement or ar-
3 rangement or other credit enhancement related to 1 or
4 more netting contracts between any 2 members of a clear-
5 ing organization shall be enforceable in accordance with
6 their terms (except as provided in section 561(b)(2) of
7 title 11, United States Code) and shall not be stayed,
8 avoided, or otherwise limited by any State or Federal law
9 other than paragraphs (8)(E), (8)(F), and (10)(B) of sec-
10 tion 11(e) of the Federal Deposit Insurance Act and sec-
11 tion 5(b)(2) of the Securities Investor Protection Act of
12 1970.”.

13 (d) ENFORCEABILITY OF CONTRACTS WITH UNIN-
14 SURED NATIONAL BANKS AND UNINSURED FEDERAL
15 BRANCHES AND AGENCIES.—The Federal Deposit Insur-
16 ance Corporation Improvement Act of 1991 (12 U.S.C.
17 4401 et seq.) is amended—

18 (1) by redesignating section 407 as section 408;

19 and

20 (2) by adding after section 406 the following

21 new section:

1 **“SEC. 407. TREATMENT OF CONTRACTS WITH UNINSURED**
2 **NATIONAL BANKS AND UNINSURED FEDERAL**
3 **BRANCHES AND AGENCIES.**

4 “(a) IN GENERAL.—Notwithstanding any other pro-
5 vision of law, paragraphs (8), (9), (10), and (11) of section
6 11(e) of the Federal Deposit Insurance Act shall apply
7 to an uninsured national bank or uninsured Federal
8 branch or Federal agency except—

9 “(1) any reference to the ‘Corporation as re-
10 ceiver’ or ‘the receiver or the Corporation’ shall refer
11 to the receiver of an uninsured national bank or un-
12 insured Federal branch or Federal agency appointed
13 by the Comptroller of the Currency;

14 “(2) any reference to the ‘Corporation’ (other
15 than in section 11(e)(8)(D) of such Act), the ‘Cor-
16 poration, whether acting as such or as conservator
17 or receiver’, a ‘receiver’, or a ‘conservator’ shall refer
18 to the receiver or conservator of an uninsured na-
19 tional bank or uninsured Federal branch or Federal
20 agency appointed by the Comptroller of the Cur-
21 rency; and

22 “(3) any reference to an ‘insured depository in-
23 stitution’ or ‘depository institution’ shall refer to an
24 uninsured national bank or an uninsured Federal
25 branch or Federal agency.

1 “(b) LIABILITY.—The liability of a receiver or conser-
2 vator of an uninsured national bank or uninsured Federal
3 branch or agency shall be determined in the same manner
4 and subject to the same limitations that apply to receivers
5 and conservators of insured depository institutions under
6 section 11(e) of the Federal Deposit Insurance Act.

7 “(c) REGULATORY AUTHORITY.—

8 “(1) IN GENERAL.—The Comptroller of the
9 Currency, in consultation with the Federal Deposit
10 Insurance Corporation, may promulgate regulations
11 to implement this section.

12 “(2) SPECIFIC REQUIREMENT.—In promul-
13 gating regulations to implement this section, the
14 Comptroller of the Currency shall ensure that the
15 regulations generally are consistent with the regula-
16 tions and policies of the Federal Deposit Insurance
17 Corporation adopted pursuant to the Federal De-
18 posit Insurance Act.

19 “(d) DEFINITIONS.—For purposes of this section, the
20 terms ‘Federal branch’, ‘Federal agency’, and ‘foreign
21 bank’ have the same meaning as in section 1(b) of the
22 International Banking Act.”.

23 **SEC. 8. BANKRUPTCY CODE AMENDMENTS.**

24 (a) DEFINITIONS OF FORWARD CONTRACT, REPUR-
25 CHASE AGREEMENT, SECURITIES CLEARING AGENCY,

1 SWAP AGREEMENT, COMMODITY CONTRACT, AND SECURITIES CONTRACT.—Title 11, United States Code, is
2 amended—
3

4 (1) in section 101—

5 (A) in paragraph (25)—

6 (i) by striking “means a contract”
7 and inserting “means—
8 “(A) a contract”;

9 (ii) by striking “, or any combination
10 thereof or option thereon;” and inserting
11 “, or any other similar agreement;”; and

12 (iii) by adding at the end the fol-
13 lowing:

14 “(B) a combination of agreements or
15 transactions referred to in subparagraphs (A)
16 and (C);

17 “(C) an option to enter into an agreement
18 or transaction referred to in subparagraph (A)
19 or (B);

20 “(D) a master netting agreement that pro-
21 vides for an agreement or transaction referred
22 to in subparagraph (A), (B), or (C), together
23 with all supplements to such master netting
24 agreement, without regard to whether such
25 master netting agreement provides for an

1 agreement or transaction that is not a forward
2 contract under this paragraph, except that such
3 master netting agreement shall be considered to
4 be a forward contract under this paragraph
5 only with respect to each agreement or trans-
6 action under such master netting agreement
7 that is referred to in subparagraph (A), (B) or
8 (C); or

9 “(E) a security agreement or arrangement,
10 or other credit enhancement, directly pertaining
11 to a contract, option, agreement, or transaction
12 referred to in subparagraph (A), (B), (C), or
13 (D), but not to exceed the actual value of such
14 contract, option, agreement, or transaction on
15 the date of the filing of the petition;”;

16 (B) by amending paragraph (47) to read
17 as follows:

18 “(47) ‘repurchase agreement’ and ‘reverse re-
19 purchase agreement’—

20 “(A) mean—

21 “(i) an agreement, including related
22 terms, which provides for the transfer of—

23 “(I) a certificate of deposit,
24 mortgage-related security (as defined
25 in the Securities Exchange Act of

1 1934), mortgage loan, interest in a
2 mortgage-related security or mortgage
3 loan, eligible bankers' acceptance,
4 qualified foreign government security;
5 or

6 “(II) security that is a direct ob-
7 ligation of, or that is fully guaranteed
8 by, the United States or an agency of
9 the United States against the transfer
10 of funds by the transferee of such cer-
11 tificate of deposit, eligible bankers' ac-
12 ceptance, security, loan, or interest;

13 with a simultaneous agreement by such
14 transferee to transfer to the transferor
15 thereof a certificate of deposit, eligible
16 bankers' acceptance, security, loan, or in-
17 terest of the kind described in subclause
18 (I) or (II), at a date certain not later than
19 1 year after the transferor's transfer or on
20 demand, against the transfer of funds;

21 “(ii) a combination of agreements or
22 transactions referred to in clauses (i) and
23 (iii);

1 “(iii) an option to enter into an agree-
2 ment or transaction referred to in clause
3 (i) or (ii);

4 “(iv) a master netting agreement that
5 provides for an agreement or transaction
6 referred to in clause (i), (ii), or (iii), to-
7 gether with all supplements to such master
8 netting agreement, without regard to
9 whether such master netting agreement
10 provides for an agreement or transaction
11 that is not a repurchase agreement under
12 this subparagraph, except that such master
13 netting agreement shall be considered to be
14 a repurchase agreement under this sub-
15 paragraph only with respect to each agree-
16 ment or transaction under such master
17 netting agreement that is referred to in
18 clause (i), (ii), or (iii); or

19 “(v) a security agreement or arrange-
20 ment, or other credit enhancement, directly
21 pertaining to a contract referred to in
22 clause (i), (ii), (iii), or (iv), but not to ex-
23 ceed the actual value of such contract on
24 the date of the filing of the petition; and

1 “(B) do not include a repurchase obliga-
2 tion under a participation in a commercial
3 mortgage loan;

4 and, for purposes of this paragraph, the term ‘quali-
5 fied foreign government security’ means a security
6 that is a direct obligation of, or that is fully guaran-
7 teed by, the central government of a member of the
8 Organization for Economic Cooperation and Devel-
9 opment;”;

10 (C) in paragraph (48) by inserting “or ex-
11 empt from such registration under such section
12 pursuant to an order of the Securities and Ex-
13 change Commission” after “1934”; and

14 (D) by amending paragraph (53B) to read
15 as follows:

16 “(53B) ‘swap agreement’ means—

17 “(A) an agreement, including the terms
18 and conditions incorporated by reference in
19 such agreement, that is—

20 “(i) an interest rate swap, option, fu-
21 ture, or forward agreement, including a
22 rate floor, rate cap, rate collar, cross-cur-
23 rency rate swap, and basis swap;

1 “(ii) a spot, same day-tomorrow, to-
2 morrow-next, forward, or other foreign ex-
3 change or precious metals agreement;

4 “(iii) a currency swap, option, future,
5 or forward agreement;

6 “(iv) an equity index or an equity
7 swap, option, future, or forward agree-
8 ment;

9 “(v) a debt index or a debt swap, op-
10 tion, future, or forward agreement;

11 “(vi) a credit spread or a credit swap,
12 option, future, or forward agreement; or

13 “(vii) a commodity index or a com-
14 modity swap, option, future, or forward
15 agreement;

16 “(B) an agreement or transaction similar
17 to an agreement or transaction referred to in
18 this paragraph that—

19 “(i) is currently, or in the future be-
20 comes, regularly entered into in the swap
21 market (including terms and conditions in-
22 corporated by reference therein); and

23 “(ii) is a forward, swap, future, or op-
24 tion on a rate, currency, commodity, equity
25 security, or other equity instrument, on a

1 debt security or other debt instrument, or
2 on an economic index or measure of eco-
3 nomic risk or value;

4 “(C) a combination of agreements or
5 transactions referred to in this paragraph;

6 “(D) an option to enter into an agreement
7 or transaction referred to in this paragraph;

8 “(E) a master netting agreement that pro-
9 vides for an agreement or transaction referred
10 to in subparagraph (A), (B), (C), or (D), to-
11 gether with all supplements to such master net-
12 ting agreement and without regard to whether
13 such master netting agreement contains an
14 agreement or transaction described in any such
15 subparagraph, but only with respect to each
16 agreement or transaction referred to in any
17 such subparagraph that is under such master
18 netting agreement; or

19 “(F) is applicable for purposes of this title
20 only and shall not be construed or applied so as
21 to challenge or affect the characterization, defi-
22 nition, or treatment of any swap agreement
23 under any other statute, regulation, or rule, in-
24 cluding the Securities Act of 1933, the Securi-
25 ties Exchange Act of 1934, the Public Utility

1 Holding Company Act of 1935, the Trust In-
2 denture Act of 1939, the Investment Company
3 Act of 1940, the Investment Advisers Act of
4 1940, the Securities Investor Protection Act of
5 1970, the Commodity Exchange Act, and the
6 regulations prescribed by the Securities and Ex-
7 change Commission or the Commodity Futures
8 Trading Commission.”;

9 (2) by amending section 741(7) to read as fol-
10 lows:

11 “(7) ‘securities contract’—

12 “(A) means—

13 “(i) a contract for the purchase, sale,
14 or loan of a security, a mortgage loan or
15 an interest in a mortgage loan, a group or
16 index of securities, or mortgage loans or
17 interests therein (including an interest
18 therein or based on the value thereof), or
19 option on any of the foregoing, including
20 an option to purchase or sell any of the
21 foregoing;

22 “(ii) an option entered into on a na-
23 tional securities exchange relating to for-
24 eign currencies;

1 “(iii) the guarantee by or to a securi-
2 ties clearing agency of a settlement of
3 cash, securities, mortgage loans or inter-
4 ests therein, group or index of securities,
5 or mortgage loans or interests therein (in-
6 cluding any interest therein or based on
7 the value thereof), or option on any of the
8 foregoing, including an option to purchase
9 or sell any of the foregoing;

10 “(iv) a margin loan;

11 “(v) any other agreement or trans-
12 action that is similar to an agreement or
13 transaction referred to in this subpara-
14 graph;

15 “(vi) a combination of the agreements
16 or transactions referred to in this subpara-
17 graph;

18 “(vii) an option to enter into an
19 agreement or transaction referred to in
20 this subparagraph;

21 “(viii) a master netting agreement
22 that provides for an agreement or trans-
23 action referred to in clause (i), (ii), (iii),
24 (iv), (v), (vi), or (vii), together with all
25 supplements to such master netting agree-

1 ment, without regard to whether such mas-
2 ter netting agreement provides for an
3 agreement or transaction that is not a se-
4 curities contract under this subparagraph,
5 except that such master netting agreement
6 shall be considered to be a securities con-
7 tract under this subparagraph only with
8 respect to each agreement or transaction
9 under such master netting agreement that
10 is referred to in clause (i), (ii), (iii), (iv),
11 (v), (vi), or (vii); or

12 “(ix) a security agreement or arrange-
13 ment, or other credit enhancement, directly
14 pertaining to a contract referred to in this
15 subparagraph, but not to exceed the actual
16 value of such contract on the date of the
17 filing of the petition; and

18 “(B) does not include a purchase, sale, or
19 repurchase obligation under a participation in a
20 commercial mortgage loan;” and

21 (3) in section 761(4)—

22 (A) by striking “or” at the end of subpara-
23 graph (D); and

24 (B) by adding at the end the following:

1 “(F) any other agreement or transaction
2 that is similar to an agreement or transaction
3 referred to in this paragraph;

4 “(G) a combination of the agreements or
5 transactions referred to in this paragraph;

6 “(H) an option to enter into an agreement
7 or transaction referred to in this paragraph;

8 “(I) a master netting agreement that pro-
9 vides for an agreement or transaction referred
10 to in subparagraph (A), (B), (C), (D), (E), (F),
11 (G), or (H), together with all supplements to
12 such master netting agreement, without regard
13 to whether such master netting agreement pro-
14 vides for an agreement or transaction that is
15 not a commodity contract under this paragraph,
16 except that such master netting agreement shall
17 be considered to be a commodity contract under
18 this paragraph only with respect to each agree-
19 ment or transaction under such master netting
20 agreement that is referred to in subparagraph
21 (A), (B), (C), (D), (E), (F), (G), or (H); or

22 “(J) a security agreement or arrangement,
23 or other credit enhancement, directly pertaining
24 to a contract referred to in this paragraph, but

1 not to exceed the actual value of such contract
2 on the date of the filing of the petition;”.

3 (b) DEFINITIONS OF FINANCIAL INSTITUTION, FI-
4 NANCIAL PARTICIPANT, AND FORWARD CONTRACT MER-
5 CHANT.—Section 101 of title 11, United States Code, is
6 amended—

7 (1) by amending paragraph (22) to read as fol-
8 lows:

9 “(22) ‘financial institution’ means—

10 “(A) a Federal reserve bank, or an entity
11 that is a commercial or savings bank, industrial
12 savings bank, savings and loan association,
13 trust company, or receiver or conservator for
14 such entity and, when such Federal reserve
15 bank, receiver, or conservator or entity is acting
16 as agent or custodian for a customer in connec-
17 tion with a securities contract, as defined in
18 section 741 of this title, such customer; or

19 “(B) in connection with a securities con-
20 tract, as defined in section 741 of this title, an
21 investment company registered under the In-
22 vestment Company Act of 1940;”;

23 (2) by inserting after paragraph (22) the fol-
24 lowing:

1 “(22A) ‘financial participant’ means an entity
2 that is a party to a securities contract, commodity
3 contract or forward contract, or on the date of the
4 filing of the petition, has a commodity contract (as
5 defined in section 761 of this title) with the debtor
6 or any other entity (other than an affiliate) of a
7 total gross dollar value of at least \$1,000,000,000 in
8 notional or actual principal amount outstanding on
9 any day during the previous 15-month period, or has
10 gross mark-to-market positions of at least
11 \$100,000,000 (aggregated across counterparties) in
12 any such agreement or transaction with the debtor
13 or any other entity (other than an affiliate) on any
14 day during the previous 15-month period;”;

15 (3) by amending paragraph (26) to read as fol-
16 lows:

17 “(26) ‘forward contract merchant’ means a
18 Federal reserve bank, or an entity whose business
19 consists in whole or in part of entering into forward
20 contracts as or with merchants or in a commodity,
21 as defined or in section 761 of this title, or any simi-
22 lar good, article, service, right, or interest which is
23 presently or in the future becomes the subject of
24 dealing or in the forward contract trade;”.

1 (c) DEFINITION OF MASTER NETTING AGREEMENT
2 AND MASTER NETTING AGREEMENT PARTICIPANT.—Sec-
3 tion 101 of title 11, United States Code, is amended by
4 inserting after paragraph (38) the following new para-
5 graphs:

6 “(38A) the term ‘master netting agreement’
7 means an agreement providing for the exercise of
8 rights, including rights of netting, setoff, liquidation,
9 termination, acceleration, or closeout, under or in
10 connection with 1 or more contracts that are de-
11 scribed in any 1 or more of paragraphs (1) through
12 (5) of section 561(a), or any security agreement or
13 arrangement or other credit enhancement related to
14 1 or more of the foregoing. If a master netting
15 agreement contains provisions relating to agree-
16 ments or transactions that are not contracts de-
17 scribed in paragraphs (1) through (5) of section
18 561(a), the master netting agreement shall be
19 deemed to be a master netting agreement only with
20 respect to those agreements or transactions that are
21 described in any 1 or more of the paragraphs (1)
22 through (5) of section 561(a);

23 “(38B) the term ‘master netting agreement
24 participant’ means an entity that, at any time before
25 the filing of the petition, is a party to an out-

1 standing master netting agreement with the debt-
2 or;”.

3 (d) SWAP AGREEMENTS, SECURITIES CONTRACTS,
4 COMMODITY CONTRACTS, FORWARD CONTRACTS, REPUR-
5 CHASE AGREEMENTS, AND MASTER NETTING AGREE-
6 MENTS UNDER THE AUTOMATIC-STAY.—

7 (1) IN GENERAL.—Section 362(b) of title 11,
8 United States Code, as amended by sections 120,
9 134, 139, 203 and 818, is amended—

10 (A) in paragraph (6), by inserting “,
11 pledged to, and under the control of,” after
12 “held by”;

13 (B) in paragraph (7), by inserting “,
14 pledged to, and under the control of,” after
15 “held by”;

16 (C) by amending paragraph (17) to read
17 as follows:

18 “(17) under subsection (a), of the setoff by a
19 swap participant of a mutual debt and claim under
20 or in connection with a swap agreement that con-
21 stitutes the setoff of a claim against the debtor for
22 a payment or transfer due from the debtor under or
23 in connection with a swap agreement against a pay-
24 ment due to the debtor from the swap participant
25 under or in connection with a swap agreement or

1 against cash, securities, or other property held by,
2 pledged to, and under the control of, or due from
3 such swap participant to guarantee, secure, or settle
4 a swap agreement;”;

5 (D) in paragraph (27), by striking “or” at
6 the end;

7 (E) in paragraph (28) by striking the pe-
8 riod at the end and inserting “; and”; and

9 (F) by inserting after paragraph (28) the
10 following new paragraph:

11 “(29) under subsection (a), of the setoff by a
12 master netting agreement participant of a mutual
13 debt and claim under or in connection with 1 or
14 more master netting agreements or any contract or
15 agreement subject to such agreements that con-
16 stitutes the setoff of a claim against the debtor for
17 any payment or other transfer of property due from
18 the debtor under or in connection with such agree-
19 ments or any contract or agreement subject to such
20 agreements against any payment due to the debtor
21 from such master netting agreement participant
22 under or in connection with such agreements or any
23 contract or agreement subject to such agreements or
24 against cash, securities, or other property held by,
25 pledged or and under the control of, or due from

1 such master netting agreement participant to mar-
2 gin, guarantee, secure, or settle such agreements or
3 any contract or agreement subject to such agree-
4 ments, to the extent such participant is eligible to
5 exercise such offset rights under paragraph (6), (7),
6 or (17) for each individual contract covered by the
7 master netting agreement in issue.”.

8 (2) LIMITATION.—Section 362 of title 11,
9 United States Code, is amended by adding at the
10 end the following:

11 “(i) LIMITATION.—The exercise of rights not subject
12 to the stay arising under subsection (a) pursuant to para-
13 graph (6), (7), or (17) of subsection (b) shall not be stayed
14 by an order of a court or administrative agency in any
15 proceeding under this title.”.

16 (e) LIMITATION OF AVOIDANCE POWERS UNDER
17 MASTER NETTING AGREEMENT.—Section 546 of title 11,
18 United States Code, is amended—

19 (1) in subsection (g) (as added by section 103
20 of Public Law 101–311)—

21 (A) by striking “under a swap agreement”;

22 (B) by striking “in connection with a swap
23 agreement” and inserting “under or in connec-
24 tion with any swap agreement”;

1 (2) by redesignating subsection (g) (as added
2 by section 222(a) of Public Law 103–394) as sub-
3 section (i); and

4 (3) by inserting before subsection (i) (as redesi-
5 gnated) the following new subsection:

6 “(h) Notwithstanding sections 544, 545, 547,
7 548(a)(2)(B), and 548(b) of this title, the trustee may not
8 avoid a transfer made by or to a master netting agreement
9 participant under or in connection with any master netting
10 agreement or any individual contract covered thereby that
11 is made before the commencement of the case, and except
12 to the extent the trustee could otherwise avoid such a
13 transfer made under an individual contract covered by
14 such master netting agreement, except under section
15 548(a)(1)(A) of this title.”.

16 (f) FRAUDULENT TRANSFERS OF MASTER NETTING
17 AGREEMENTS.—Section 548(d)(2) of title 11, United
18 States Code, is amended—

19 (1) in subparagraph (C), by striking “and”;

20 (2) in subparagraph (D), by striking the period
21 and inserting “; and”; and

22 (3) by adding at the end the following new sub-
23 paragraph:

24 “(E) a master netting agreement partici-
25 pant that receives a transfer in connection with

1 a master netting agreement or any individual
2 contract covered thereby takes for value to the
3 extent of such transfer, except, with respect to
4 a transfer under any individual contract covered
5 thereby, to the extent such master netting
6 agreement participant otherwise did not take
7 (or is otherwise not deemed to have taken) such
8 transfer for value.”.

9 (g) TERMINATION OR ACCELERATION OF SECURITIES
10 CONTRACTS.—Section 555 of title 11, United States Code,
11 is amended—

12 (1) by amending the section heading to read as
13 follows:

14 “§ 555. **Contractual right to liquidate, terminate, or**
15 **accelerate a securities contract”;** and

16 (2) in the first sentence, by striking “liquida-
17 tion” and inserting “liquidation, termination, or ac-
18 celeration”.

19 (h) TERMINATION OR ACCELERATION OF COMMOD-
20 ITIES OR FORWARD CONTRACTS.—Section 556 of title 11,
21 United States Code, is amended—

22 (1) by amending the section heading to read as
23 follows:

1 **“§ 556. Contractual right to liquidate, terminate, or**
2 **accelerate a commodities contract or for-**
3 **ward contract”; and**

4 (2) in the first sentence, by striking “liquida-
5 tion” and inserting “liquidation, termination, or ac-
6 celeration”.

7 (i) TERMINATION OR ACCELERATION OF REPUR-
8 CHASE AGREEMENTS.—Section 559 of title 11, United
9 States Code, is amended—

10 (1) by amending the section heading to read as
11 follows:

12 **“§ 559. Contractual right to liquidate, terminate, or**
13 **accelerate a repurchase agreement”; and**

14 (2) in the first sentence, by striking “liquida-
15 tion” and inserting “liquidation, termination, or ac-
16 celeration”.

17 (j) LIQUIDATION, TERMINATION, OR ACCELERATION
18 OF SWAP AGREEMENTS.—Section 560 of title 11, United
19 States Code, is amended—

20 (1) by amending the section heading to read as
21 follows:

22 **“§ 560. Contractual right to liquidate, terminate, or**
23 **accelerate a swap agreement”; and**

24 (2) in the first sentence, by striking “termi-
25 nation of a swap agreement” and inserting “liquida-

1 tion, termination, or acceleration of a swap agree-
2 ment”; and

3 (3) by striking “in connection with any swap
4 agreement” and inserting “in connection with the
5 termination, liquidation, or acceleration of a swap
6 agreement”.

7 (k) LIQUIDATION, TERMINATION, ACCELERATION, OR
8 OFFSET UNDER A MASTER NETTING AGREEMENT AND
9 ACROSS CONTRACTS.—Title 11, United States Code, is
10 amended by inserting after section 560 the following new
11 section:

12 **“§ 561. Contractual right to terminate, liquidate, ac-**
13 **celerate, or offset under a master netting**
14 **agreement and across contracts**

15 “(a) IN GENERAL.—Subject to subsection (b), the ex-
16 ercise of any contractual right, because of a condition of
17 the kind specified in section 365(e)(1), to cause the termi-
18 nation, liquidation, or acceleration of or to offset or net
19 termination values, payment amounts or other transfer ob-
20 ligations arising under or in connection with 1 or more
21 (or the termination, liquidation, or acceleration of 1 or
22 more—

23 “(1) securities contracts, as defined in section
24 741(7);

1 “(2) commodity contracts, as defined in section
2 761(4);

3 “(3) forward contracts;

4 “(4) repurchase agreements;

5 “(5) swap agreements; or

6 “(6) master netting agreements,

7 shall not be stayed, avoided, or otherwise limited by oper-
8 ation of any provision of this title or by any order of a
9 court or administrative agency in any proceeding under
10 this title.

11 “(b) EXCEPTION.—

12 “(1) A party may exercise a contractual right
13 described in subsection (a) to terminate, liquidate, or
14 accelerate only to the extent that such party could
15 exercise such a right under section 555, 556, 559,
16 or 560 for each individual contract covered by the
17 master netting agreement in issue.

18 “(2) If a debtor is a commodity broker subject
19 to subchapter IV of chapter 7 of this title—

20 “(A) a party may not net or offset an obli-
21 gation to the debtor arising under, or in con-
22 nection with, a commodity contract against any
23 claim arising under, or in connection with,
24 other instruments, contracts, or agreements
25 listed in subsection (a) except to the extent the

1 party has no positive net equity in the com-
2 modity accounts at the debtor, as calculated
3 under subchapter IV;

4 “(B) another commodity broker may not
5 net or offset an obligation to the debtor arising
6 under, or in connection with, a commodity con-
7 tract entered into or held on behalf of a cus-
8 tomer of the debtor against any claim arising
9 under, or in connection with, other instruments,
10 contracts, or agreements listed in subsection
11 (a).

12 “(c) DEFINITION.—As used in this section, the term
13 ‘contractual right’ includes a right set forth in a rule or
14 bylaw of a national securities exchange, a national securi-
15 ties association, or a securities clearing agency, a right
16 set forth in a bylaw of a clearing organization or contract
17 market or in a resolution of the governing board thereof,
18 and a right, whether or not evidenced in writing, arising
19 under common law, under law merchant, or by reason of
20 normal business practice.”.

21 (l) MUNICIPAL BANKRUPTCIES.—Section 901 of title
22 11, United States Code, is amended—

23 (1) by inserting “, 555, 556” after “553”; and

24 (2) by inserting “, 559, 560, 561,” after “557”.

1 (m) ANCILLARY PROCEEDINGS.—Section 304 of title
2 11, United States Code, is amended by adding at the end
3 the following:

4 “(d) Any provisions of this title relating to securities
5 contracts, commodity contracts, forward contracts, repur-
6 chase agreements, swap agreements, or master netting
7 agreements shall apply in a case ancillary to a foreign pro-
8 ceeding under this section or any other section of this title,
9 so that enforcement of contractual provisions of such con-
10 tracts and agreements in accordance with their terms will
11 not be stayed or otherwise limited by operation of any pro-
12 vision of this title or by order of a court in any case under
13 this title, and to limit avoidance powers to the same extent
14 as in a proceeding under chapter 7 or 11 of this title (such
15 enforcement not to be limited based on the presence or
16 absence of assets of the debtor in the United States).”.

17 (n) COMMODITY BROKER LIQUIDATIONS.—Title 11,
18 United States Code, is amended by inserting after section
19 766 the following:

1 **“§ 767. Commodity broker liquidation and forward**
2 **contract merchants, commodity brokers,**
3 **stockbrokers, financial institutions, secu-**
4 **rities clearing agencies, swap partici-**
5 **pants, repo participants, and master net-**
6 **ting agreement participants**

7 “Notwithstanding any other provision of this title,
8 the exercise of rights by a forward contract merchant,
9 commodity broker, stockbroker, financial institution, secu-
10 rities clearing agency, swap participant, repo participant,
11 or master netting agreement participant under this title
12 shall not affect the priority of any unsecured claim it may
13 have after the exercise of such rights.”.

14 (o) STOCKBROKER LIQUIDATIONS.—Title 11, United
15 States Code, is amended by inserting after section 752 the
16 following:

17 **“§ 753. Stockbroker liquidation and forward contract**
18 **merchants, commodity brokers, stock-**
19 **brokers, financial institutions, securities**
20 **clearing agencies, swap participants,**
21 **repo participants, and master netting**
22 **agreement participants**

23 “Notwithstanding any other provision of this title,
24 the exercise of rights by a forward contract merchant,
25 commodity broker, stockbroker, financial institution, secu-
26 rities clearing agency, swap participant, repo participant,

1 financial participant, or master netting agreement partici-
2 pant under this title shall not affect the priority of any
3 unsecured claim it may have after the exercise of such
4 rights.”.

5 (p) SETOFF.—Section 553 of title 11, United States
6 Code, is amended—

7 (1) in subsection (a)(3)(C), by inserting “(ex-
8 cept for a setoff of a kind described in section
9 362(b)(6), 362(b)(7), 362(b)(17), 362(b)(19), 555,
10 556, 559, or 560 of this title)” before the period;
11 and

12 (2) in subsection (b)(1), by striking
13 “362(b)(14),” and inserting “362(b)(17),
14 362(b)(19), 555, 556, 559, 560.”.

15 (q) SECURITIES CONTRACTS, COMMODITY CON-
16 TRACTS, AND FORWARD CONTRACTS.—Title 11, United
17 States Code, is amended—

18 (1) in section 362(b)(6), by striking “financial
19 institutions,” each place such term appears and in-
20 serting “financial institution, financial participant”;

21 (2) in section 546(e), by inserting “financial
22 participant” after “financial institution,”;

23 (3) in section 548(d)(2)(B), by inserting “fi-
24 nancial participant” after “financial institution,”;

25 (4) in section 555—

1 (A) by inserting “financial participant”
2 after “financial institution,”; and

3 (B) by inserting before the period “, a
4 right set forth in a bylaw of a clearing organi-
5 zation or contract market or in a resolution of
6 the governing board thereof, and a right,
7 whether or not in writing, arising under com-
8 mon law, under law merchant, or by reason of
9 normal business practice”; and

10 (5) in section 556, by inserting “, financial par-
11 ticipant” after “commodity broker”.

12 (r) CONFORMING AMENDMENTS.—Title 11 of the
13 United States Code is amended—

14 (1) in the table of sections of chapter 5—

15 (A) by amending the items relating to sec-
16 tions 555 and 556 to read as follows:

“555. Contractual right to liquidate, terminate, or accelerate a securities con-
tract.

“556. Contractual right to liquidate, terminate, or accelerate a commodities con-
tract or forward contract.”; and

17 (B) by amending the items relating to sec-
18 tions 555 and 556 to read as follows:

“559. Contractual right to liquidate, terminate, or accelerate a repurchase
agreement.

“560. Contractual right to liquidate, terminate, or accelerate a swap agree-
ment.”; and

19 (2) in the table of sections of chapter 7—

20 (A) by inserting after the item relating to
21 section 766 the following:

“767. Commodity broker liquidation and forward contract merchants, commodity brokers, stockbrokers, financial institutions, securities clearing agencies, swap participants, repo participants, and master netting agreement participants.”; and

1 (B) by inserting after the item relating to
2 section 752 the following:

“753. Stockbroker liquidation and forward contract merchants, commodity brokers, stockbrokers, financial institutions, securities clearing agencies, swap participants, repo participants, and master netting agreement participants.”.

3 **SEC. 9. RECORDKEEPING REQUIREMENTS.**

4 Section 11(e)(8) of the Federal Deposit Insurance
5 Act (12 U.S.C. 1821(e)(8)) is amended by adding at the
6 end the following new subparagraph:

7 “(H) RECORDKEEPING REQUIREMENTS.—
8 The Corporation, in consultation with the ap-
9 propriate Federal banking agencies, may pre-
10 scribe regulations requiring more detailed rec-
11 ordkeeping with respect to qualified financial
12 contracts (including market valuations) by in-
13 sured depository institutions.”.

14 **SEC. 10. EXEMPTIONS FROM CONTEMPORANEOUS EXECU-
15 TION—REQUIREMENT.**

16 Section 13(e)(2) of the Federal Deposit Insurance
17 Act (12 U.S.C. 1823(e)(2)) is amended to read as follows:

18 “(2) EXEMPTIONS FROM CONTEMPORANEOUS
19 EXECUTION REQUIREMENT.—An agreement to pro-
20 vide for the lawful collateralization of—

1 “(A) deposits of, or other credit extension
2 by, a Federal, State, or local governmental enti-
3 ty, or of any depositor referred to in section
4 11(a)(2), including an agreement to provide col-
5 lateral in lieu of a surety bond;

6 “(B) bankruptcy estate funds pursuant to
7 section 345(b)(2) of title 11, United States
8 Code;

9 “(C) extensions of credit, including any
10 overdraft, from a Federal reserve bank or Fed-
11 eral home loan bank; or

12 “(D) 1 or more qualified financial con-
13 tracts, as defined in section 11(e)(8)(D), shall
14 not be deemed invalid pursuant to paragraph
15 (1)(B) solely because such agreement was not
16 executed contemporaneously with the acquisi-
17 tion of the collateral or because of pledges, de-
18 livery, or substitution of the collateral made in
19 accordance with such agreement.”.

20 **SEC. 11. DAMAGE MEASURE.**

21 (a) Title 11, United States Code, is amended—

22 (1) by inserting after section 561 the following:

1 **“§ 562. Damage measure in connection with swap**
2 **agreements, securities contracts, forward**
3 **contracts, commodity contracts, repur-**
4 **chase agreements, or master netting**
5 **agreements**

6 “If the trustee rejects a swap agreement, securities
7 contract as defined in section 741 of this title, forward
8 contract, commodity contract (as defined in section 761
9 of this title) repurchase agreement, or master netting
10 agreement pursuant to section 365(a) of this title, or if
11 a forward contract merchant, stockbroker, financial insti-
12 tution, securities clearing agency, repo participant, finan-
13 cial participant, master netting agreement participant, or
14 swap participant liquidates, terminates, or accelerates
15 such contract or agreement, damages shall be measured
16 as of the earlier of—

17 “(1) the date of such rejection; or

18 “(2) the date of such liquidation, termination,
19 or acceleration.”; and

20 (2) in the table of sections of chapter 5 by in-
21 serting after the item relating to section 561 the fol-
22 lowing:

“562. Damage measure in connection with swap agreements, securities con-
tracts, forward contracts, commodity contracts, repurchase
agreements, or master netting agreements.”.

23 (b) CLAIMS ARISING FROM REJECTION.—Section
24 502(g) of title 11, United States Code, is amended—

1 (1) by designating the existing text as para-
2 graph (1); and

3 (2) by adding at the end the following:

4 “(2) A claim for damages calculated in accordance
5 with section 561 of this title shall be allowed under sub-
6 section (a), (b), or (c), or disallowed under subsection (d)
7 or (e), as if such claim had arisen before the date of the
8 filing of the petition.”.

9 **SEC. 12. SIPC STAY.**

10 Section 5(b)(2) of the Securities Investor Protection
11 Act of 1970 (15 U.S.C. 78eee(b)(2)) is amended by adding
12 after subparagraph (B) the following new subparagraph:

13 “(C) EXCEPTION FROM STAY.—

14 “(i) Notwithstanding section 362 of
15 title 11, United States Code, neither the
16 filing of an application under subsection
17 (a)(3) nor any order or decree obtained by
18 Securities Investor Protection Corporation
19 from the court shall operate as a stay of
20 any contractual rights of a creditor to liq-
21 uidate, terminate, or accelerate a securities
22 contract, commodity contract, forward con-
23 tract, repurchase agreement, swap agree-
24 ment, or master netting agreement, each
25 as defined in title 11, to offset or net ter-

1 mination values, payment amounts, or
2 other transfer obligations arising under or
3 in connection with 1 or more of such con-
4 tracts or agreements, or to foreclose on
5 any cash collateral pledged by the debtor
6 whether or not with respect to 1 or more
7 of such contracts or agreements.

8 “(ii) Notwithstanding clause (i), such
9 application, order, or decree may operate
10 as a stay of the foreclosure on securities
11 collateral pledged by the debtor, whether
12 or not with respect to 1 or more of such
13 contracts or agreements, securities sold by
14 the debtor under a repurchase agreement
15 or securities lent under a securities lending
16 agreement.

17 “(iii) As used in this section, the term
18 ‘contractual right’ includes a right set
19 forth in a rule or bylaw of a national secu-
20 rities exchange, a national securities asso-
21 ciation, or a securities clearing agency, a
22 right set forth in a bylaw of a clearing or-
23 ganization or contract market or in a reso-
24 lution of the governing board thereof, and
25 a right, whether or not in writing, arising

1 under common law, under law merchant,
2 or by reason of normal business practice.”.

3 **SEC. 13. ASSET-BACKED SECURITIZATIONS.**

4 Section 541 of title 11, United States Code, is
5 amended—

6 (1) in subsection (b), by striking “or” at the
7 end of paragraph (4);

8 (2) by redesignating paragraph (5) of sub-
9 section (b) as paragraph (6);

10 (3) by inserting after paragraph (4) of sub-
11 section (b) the following new paragraph:

12 “(5) any eligible asset (or proceeds thereof), to
13 the extent that such eligible asset was transferred by
14 the debtor, before the date of commencement of the
15 case, to an eligible entity in connection with an
16 asset-backed securitization, except to the extent such
17 asset (or proceeds or value thereof) may be recov-
18 ered by the trustee under section 550 by virtue of
19 avoidance under section 548(a); or”; and

20 (4) by adding at the end the following new sub-
21 section:

22 “(e) DEFINITIONS.—For purposes of this section, the
23 following definitions shall apply:

24 “(1) ASSET-BACKED SECURITIZATION.—The
25 term ‘asset-backed securitization’ means a trans-

1 action in which eligible assets transferred to an eligi-
2 ble entity are used as the source of payment on se-
3 curities, the most senior of which are rated invest-
4 ment grade by 1 or more nationally recognized secu-
5 rities rating organizations, issued by an issuer;

6 “(2) ELIGIBLE ASSET.—The term ‘eligible
7 asset’ means—

8 “(A) financial assets (including interests
9 therein and proceeds thereof), either fixed or re-
10 volving, including residential and commercial
11 mortgage loans, consumer receivables, trade re-
12 ceivables, and lease receivables, that, by their
13 terms, convert into cash within a finite time pe-
14 riod, plus any rights or other assets designed to
15 assure the servicing or timely distribution of
16 proceeds to security holders;

17 “(B) cash; and

18 “(C) securities.

19 “(3) ELIGIBLE ENTITY.—The term ‘eligible en-
20 tity’ means—

21 “(A) an issuer; or

22 “(B) a trust, corporation, partnership, or
23 other entity engaged exclusively in the business
24 of acquiring and transferring eligible assets di-

1 rectly or indirectly to an issuer and taking ac-
2 tions ancillary thereto;

3 “(4) ISSUER.—The term ‘issuer’ means a trust,
4 corporation, partnership, or other entity engaged ex-
5 clusively in the business of acquiring and holding eli-
6 gible assets, issuing securities backed by eligible as-
7 sets, and taking actions ancillary thereto.

8 “(5) TRANSFERRED.—The term ‘transferred’
9 means the debtor, pursuant to a written agreement,
10 represented and warranted that eligible assets were
11 sold, contributed, or otherwise conveyed with the in-
12 tention of removing them from the estate of the
13 debtor pursuant to subsection (b)(5), irrespective,
14 without limitation of—

15 “(A) whether the debtor directly or indi-
16 rectly obtained or held an interest in the issuer
17 or in any securities issued by the issuer;

18 “(B) whether the debtor had an obligation
19 to repurchase or to service or supervise the
20 servicing of all or any portion of such eligible
21 assets; or

22 “(C) the characterization of such sale, con-
23 tribution, or other conveyance for tax, account-
24 ing, regulatory reporting, or other purposes.”.

1 **SEC. 14. FEDERAL RESERVE COLLATERAL REQUIREMENTS.**

2 The 2d sentence of the 2d undesignated paragraph
3 of section 16 of the Federal Reserve Act (12 U.S.C. 412)
4 is amended by striking “acceptances acquired under sec-
5 tion 13 of this Act” and inserting “acceptances acquired
6 under section 10A, 10B, 13, or 13A of this Act”.

7 **SEC. 15. SEVERABILITY; EFFECTIVE DATE; APPLICATION**
8 **OF AMENDMENTS.**

9 (a) SEVERABILITY.—If any provision of this Act or
10 any amendment made by this Act, or the application of
11 any such provision or amendment to any person or cir-
12 cumstance, is held to be unconstitutional, the remaining
13 provisions of and amendments made by this Act and the
14 application of such other provisions and amendments to
15 any person or circumstance shall not be affected thereby.

16 (b) EFFECTIVE DATE.—This Act shall take effect on
17 the date of the enactment of this Act.

18 (c) APPLICATION OF AMENDMENTS.—The amend-
19 ments made by this Act shall apply with respect to cases
20 commenced or appointments made under any Federal or
21 State law after the date of enactment of this Act, but shall
22 not apply with respect to cases commenced or appoint-
23 ments made under any Federal or State law before the
24 date of enactment of this Act.

○